

REMARKS:

Claims 1-28 are currently pending in the application.

Claims 1-28 are hereby canceled herewith, without *prejudice*.

Claims 29-56 are hereby added herewith.

Claims 1-28 stand rejected under 35 U.S.C. § 101.

Claims 1-2, 5-10, 13-18, and 21-25 stand rejected under 35 U.S.C. § 102(e) over U.S. Publication No. 2008/0126265 to Livesay et al. (“*Livesay*”).

Applicant respectfully submits that all of Applicant’s arguments and amendments are without *prejudice* or *disclaimer*. In addition, Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicant further respectfully submits that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicant are considered sufficient to overcome the Examiner’s rejections. In addition, Applicant reserves the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

REJECTION UNDER 35 U.S.C. § 101:

Claims 1-28 stand rejected under 35 U.S.C. § 101 as allegedly being directed towards non-statutory subject matter. Applicant respectfully disagrees. Applicant respectfully submits that Examiner’s rejections of Claims 1-28 under 35 U.S.C. § 101 is moot because Claims 1-28 have been canceled. Applicant respectfully submits that added Claims 29-56 are in full conformance with 35 U.S.C. § 101.

REJECTION UNDER 35 U.S.C. § 102(e):

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) over *Livesay*.

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628,631 (Fed. Cir. 1987). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991).

Applicant respectfully submits that by canceling ***Claims 1-28 Applicant has rendered moot the Examiner's rejection of these claims and the Examiner's arguments in support of the rejection of these claims.*** Applicants further respectfully submit that new Claims 29-56 contain unique and novel limitations that are not taught, suggested, or even hinted at in *Livesay*.

Applicant's Claims are Patentable over *Livesay*

Applicant respectfully submits that new Claims 29-56 are considered patentably distinguishable over *Livesay*. Applicant further respectfully submits that Claims 29-56 are in condition for allowance. Thus, Applicant respectfully requests that Claims 29-56 be allowed.

CONCLUSION:

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicant believes no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

14 January 2009
Date

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